



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

173, 175-180; Dec. Dig. § 62.\* 9 Va.-W. Va. Enc. Dig. 834; 14 Va.-W. Va. Enc. Dig. 717; 15 Va.-W. Va. Enc. Dig. 681.]

Appeal from Circuit Court, Wise County.

Suit by Kelly & Vicars against the Stonegap Colliery Company. Decree for the plaintiffs, and defendant appeals. Reversed, with directions to dismiss the bill.

*Bond & Bruce*; of Wise, *Bullitt & Chalkley*, of Big Stone Gap, and *White & Case*, of New York City, for appellants.

*Geo. C. Perry* and *E. M. Fulton*, both of Wise, for appellees.

---

STEELE'S ADM'R *v.* COLONIAL COAL & COKE CO.

Sept. 11, 1913.

[79 S. E. 346.]

**1. Railroads (§ 282\*)—Injuries to Licensee—Sufficiency of Evidence—Negligence.**—In an action for the death of a coal miner who was killed by being knocked from the platform of an engine, where he was riding for his own convenience, by the impact of an engine of the defendant company with a car coupled to the engine on which he was riding, evidence held insufficient to show any actionable negligence on the part of the employees of the defendant company.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 910-923; Dec. Dig. § 282.\* 11 Va.-W. Va. Enc. Dig. 597; 14 Va.-W. Va. Enc. Dig. 868; 15 Va.-W. Va. Enc. Dig. 849.]

**2. Trials (§ 156\*)—Demurrer to Evidence—Determination.**—Where deceased was killed by being thrown from the platform of a dinkey engine, on which he was riding, by the impact of another engine against a car, from which the dinkey had just been uncoupled, but the evidence failed to show whether it was before or after the dinkey was put in motion, it will be assumed on demurrer to the evidence that it was afterwards.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 354-356; Dec. Dig. § 156.\* 4 Va.-W. Va. Enc. Dig. 524; 14 Va.-W. Va. Enc. Dig. 331; 15 Va.-W. Va. Enc. Dig. 282.]

**3. Negligence (§ 121\*)—Actions—Presumption and Burden of Proof.**—Negligence will not be presumed in an action to recover damages for personal injuries; but the burden is upon the plaintiff to prove it by a preponderance of the evidence.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 217-220, 224-228, 271; Dec. Dig. § 121.\* 10 Va.-W. Va. Enc. Dig. 402; 14 Va.-W. Va. Enc. Dig. 771; 15 Va.-W. Va. Enc. Dig. 730.]

**4. Negligence (§ 1\*)—Actions—Assumption of Risk.**—No cause of

---

\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

action arises from an injury caused by the doing of a dangerous but lawful act in a lawful manner; but in such cases the doctrine of assumption of risk applies.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. § 1; Dec. Dig. § 1.\* 10 Va.-W. Va. Enc. Dig. 377; 14 Va.-W. Va. Enc. Dig. 767; 15 Va.-W. Va. Enc. Dig. 724.]

**5. Railroads (§ 276\*)—Injuries to Licensees—Assumption of Risk.—**

The rule that one who takes passage on a freight train assumes the risk of such jerking and jarring as are incident to the operation of such trains applies more strongly to a licensee than to a passenger, for whose safety the carrier is held to the exercise of extraordinary care.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 878-886; Dec. Dig. § 276.\* 11 Va.-W. Va. Enc. Dig. 570; 14 Va.-W. Va. Enc. Dig. 865; 15 Va.-W. Va. Enc. Dig. 845.]

**6. Railroads (§ 260\*)—Injuries to Licensee—Duty to Make Rules.—**

Where one coal company allows another to use its railroad yards, it owes no duty to licensee on an engine of the other company to promulgate rules for the movement of engines in the yards.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 817-823; Dec. Dig. § 260.\* 11 Va.-W. Va. Enc. Dig. 570; 14 Va.-W. Va. Enc. Dig. 865; 15 Va.-W. Va. Enc. Dig. 845.]

**7. Railroads (§ 282\*)—Injuries to Licensees—Sufficiency of Evidence—Proximate Cause.—**In an action for the death of one who was killed while riding upon an engine of a coal company in the yards of the defendant company, evidence held insufficient to show any proximate causal connection between the failure of the defendant company to promulgate rules for the movement of engines in its yards and the injury.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 910-923; Dec. Dig. § 282.\* 11 Va.-W. Va. Enc. Dig. 597; 14 Va.-W. Va. Enc. Dig. 868; 15 Va.-W. Va. Enc. Dig. 849.]

Error to Circuit Court, Wise County.

Action by William Steele's administrator against the Colonial Coal & Coke Company. Judgment for the defendant upon a demurrer to the evidence, and plaintiff brings error. Affirmed.

*E. M. Fulton*, of Wise, and *A. N. Kilgore*, of Norton, for plaintiff in error.

*Bullitt & Chalkley*, of Big Stone Gap, for defendant in error.

---

\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.